IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO. 93476 OF 2020

Nibir Jyoti Das
Age : 19 years,
s/o Debak Kumar Das
Presently residing at
H.No.30, Tribeni Path, Suraj
Nagar, Sixmile, Guwahati,
Khanapara, Kampur Metro,
Assam – 781 022 ..Petitioner

Versus

1. State of Maharashtra
Through its Department of
Medical Education & Drugs,
Mantralaya, Bombay.

2. Director Medical Education
& Research, St. Georges'
Hospital Compound,
Mumbai.

3. Commissioner,
Common Entrance Test Cell
Government Dental College &
Hospital Building, St. George's
Hospital Compound,
Mumbai 400 001. ..Respondents

WITH
WRIT PETITION (ST) NO. 93473 OF 2020

Ms.Satyanidhi D. Dalal
Age: 17 years, since minor through
Her father Mr.Dattaprasad M. Dalal,
Age : 47, presently residing at
C1-401, Whistling Palms, Mankar
Chowk, Opposite Yashoda Garden,
Mangal Karyalaya Wakad,
Pune – 411 057. ..Petitioner

Versus

1. State of Maharashtra
   Through its Department of
   Medical Education & Drugs,
   Mantralaya, Bombay.

2. Director Medical Education
   & Research, St. Georges'
   Hospital Compound,
   Mumbai.

3. Commissioner,
   Common Entrance Test Cell
   Government Dental College &
   Hospital Building, St. George's
   Hospital Compound,
   Mumbai 400 001. ..Respondents

WITH
WRIT PETITION (ST) NO. 92812 OF 2020

1. Vedantaa Institute of Academic
   Excellence Pvt. Ltd.
   A Company Registered under
   Companies Act 1956 having

Registered office at Godrej
Coliseum B-3, 2nd Floor, Somaiyya
Hospital Road, Sion (East),
Mumbai.
Through its Authorized signatory,
Mr. P. R. Raman, Age: 32 years.

2. Vedantaa Institute of Medical
Sciences
Having office at Village – Saswad &
At Post Dhundalwadi, Taluka –
Dahanu, District – Palghar.
Through its Director,
Dr. Ganesh V. Kesari, Age 72 yrs. ..Petitioners

Versus

1. State of Maharashtra
Through its Department of
Medical Education & Drugs,
Mantralaya, Mumbai.

2. Director Medical Education
& Research, St. Georges'
Hospital Compound,
Mumbai.

3. The Commissioner,
State CET Cell, State of
Maharashtra, 8th Floor,
New Excelsior Cinema Building,
AK Nayak Marg, Fort,
Mumbai 400 001. ..Respondents

WITH

WRIT PETITION NO. 10158 OF 2016

1. Mahatma Gandhi Vidyamandir
A Trust incorporated under the

Bombay Public Trust Act, 1950
and Society Registration Act, 1860,
having its office at Venkatrao
Hiray Marg, Malegaon Camp,
District: Nashik, Through its
Joint Secretary, Dr. Vitthal Sahadu
More, Age : 67 yrs.

2. Mahatma Gandhi Vidyamandir's
K.B.H. Dental College & Hospital
Panchavati, Nashik – 422 603,
Through its Principal, Dr. Sanjay
U. Bhawar, Age: 60 yrs. ..Petitioners

Versus

1. State of Maharashtra
Through its Department of Medical
Education & Drugs, Mantralaya,
Mumbai.

2. Director of Medical Education &
Research, St. Georges' Hospital
Compound, Mumbai.

3. The Competent Authority /
Commissioner of State CET Cell,
State of Maharashtra,
305, Government Polytechnic
Builindg, 49, Kherwadi, Ali Yawar
Jung Marg, Bandra (East),
Mumbai – 400 051. ..Respondents

WITH
CIVIL APPLICATION No.2692 OF 2016
IN
WRIT PETITION NO. 10158 OF 2016

Nihar Girish Kulkarni & Anr. … Applicants

Versus

Mahatma Gandhi Vidyamandir,
Through Joint Secretary & Anr. … Respondents

WITH
CIVIL APPLICATION (ST) No.24994 OF 2016
IN
WRIT PETITION NO. 10158 OF 2016

Miss.Shivani Kishore Bele & Ors. … Applicants

Versus

Mahatma Gandhi Vidyamandir,
Through Joint Secretary & Anr. … Respondents

WITH
CIVIL APPLICATION (ST) No.24995 OF 2016
IN
WRIT PETITION NO. 10158 OF 2016

Tarang Anuj Gupta & Anr. … Applicants

Versus

Mahatma Gandhi Vidyamandir,
Through Joint Secretary & Anr. … Respondents

WITH
WRIT PETITION NO. 10506 OF 2016

1. Sinhgad Technical Education Society
Registered under Society's
Registration Act, 1860, having its
Registered office at
19/15, Erandwane, Smt.Khilare Marg,
Off: Karve Road, Pune 411 004.
Through its founder –
President Shri M. N. Navale

2. Smt. Kashibai Navale Medical
College & General Hospital,
Having its office at 49/1, Narhe,
Off. Mumbai-Pune Bypass,
Pune 411 041.

3. Sinhgad Dental College & Hospital,
Having its office at S.No.44/1,
Vadgaon (BK), Pune 411 041 ..Petitioners

Versus

1. State of Maharashtra
Through the Principal Secretary,
Dept. of Medical Education and
Drug, Govt. Of Maharashtra,
Mangtralaya, Mumbai 400 032.

2. The Commissioner and the
Competent Authority,
State CET Cell, Maharashtra
State, Mumbai.

3. Directorate of Medical Education &
Research,
Having its office at Govt. Dental
College & Hospital Building,
4th Floor, St. George's Hospital
Compound, P.D'Mello Marg,
Mumbai 400 001. ..Respondents

WITH
WRIT PETITION NO. 10507 OF 2016

Association of Managements of
Unaided Private Medical and Dental
Colleges, having office at 26870,
Chandresh Bhavan, Ground Floor,

Room No.9, Shahid Bhagat Sing Road,
Fort, Mumbai 400 001
Through its Administrative Officer,
Shri Ranga Srinivasan, Age: 70 yrs. ..Petitioner

Versus

1. State of Maharashtra
Through its Department of
Medical Education & Drugs,
Mantralaya, Mumbai.

2. Director of Medical Education
& Research, St. Georges'
Hospital Compound,
Mumbai.

3. The Competent Authority/
Commissioner of State CET Cell,
State of Maharashtra
305, Government Polytechnic
Building, 49 Kherwadi,
Ali Yawar Jung Marg,
Bandra (E), Mumbai 400 051. ..Respondents

Mr. V. M. Thorat, Ms. Pooja V. Thorat, Mr. M. V. Thorat, Mr. Anukul Seth, Mr. Madhav Kulkarni and Mr. Amar Bodke for petitioners in all the matters.

Mr. A. A. Kumbhakoni, Advocate General, Mr. P. P. Kakade, Govt. Pleader a/w Smt. N. M. Mehra, AGP for respondent - State all the matters.

CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.

RESERVED ON : JANUARY 18, 2021
PRONOUNCED ON: MARCH 9, 2021.

JUDGMENT : (Per Dipankar Datta, CJ.)

PRELUDE:

1. By a legislative exercise, which shall be noted hereafter in due course, the State of Maharashtra has placed an embargo in respect of 85% of seats available in colleges/institutions imparting education in the field of Health Sciences in Maharashtra. If such embargo were displayed on a signboard, it would read "No Admission for Outsiders in private unaided colleges". This batch of writ petitions attempts to remove such signboard and replace it, seemingly with "Admission for Outsiders is Allowed in private unaided colleges".

Statutory requirement for admission to Medical Courses in the State of Maharashtra and Allocation of Seats:

2. Admission to unaided private educational institutions in the State of Maharashtra imparting education in professional courses including imparting education in the field of Health Sciences is regulated by the Maharashtra Unaided Private Professional Educational Institutes (Regulation of Admissions and Fees) Act, 2015 (hereafter "the 2015 Act", for short). Power is conferred by Section 23 of the 2015 Act to the State Government to frame

Rules. In exercise of such power, the State Government has framed Rules titled "The Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions to the Full Time Professional Undergraduate Medical and Dental Courses) Rules, 2016 (hereafter "the 2016 Rules", for short). Rule 8 of the 2016 Rules provides for allocation of seats. The percentage of allocation of seats for various types of candidates through National Eligibility-cum-Entrance Test (hereafter "NEET", for short) for the first year of medical courses shall be as per the regulations of the Medical Council of India (hereafter "the MCI", for short) and in accordance with the policy of the Government as specified in the Schedule. It is considered appropriate to reproduce the Schedule hereunder:

Schedule

Sr.No.	Type of Institution	Percentage of seats to be filled through the State Common Entrance Test Cell	Institutional Quota (Including NRI Quota)
(1)	(2)	(3)	(4)
1.	Unaided Private Professional Educational Institutions (excluding Minority institution)	85%	15%

2.	Unaided Minority Educational Institutions	85% For Minority Community, however unfilled seats will be filled by Non-minority candidates	15%

3. The 2016 Rules having been brought into force with effect from August 18, 2016, the eligibility criteria for seeking admission in undergraduate medical courses, with which we are presently concerned, were as under:

For the Academic Year 2016

(a) If 10th and 12th standards were cleared by a student from an institution situate within the State of Maharashtra, domicile was not a requirement; and

(b) If a student cleared 10th standard from an institution outside the State of Maharashtra and 12th standard within the State of Maharashtra, in such case, domicile was a requirement.

For the Academic Year 2017

(a) A student was required to clear 10th and 12th from an institution situate within the State of Maharashtra; and

(b) Domicile was a requirement.

4. There appeared to be an ambiguity in Rule 5 of the 2016 Rules, which was sought to be removed by prescribing the

eligibility criteria with effect from September 2, 2016 as under:

(a) A student was required to clear 10th and 12th standards from an institution situate within the State of Maharashtra;

(b) Domicile was a requirement; and

(c) For the academic year 2016-2017, relaxation was granted to the effect that even if a student had cleared 10th standard from an institution situate outside the State of Maharashtra, yet, he would be eligible provided he has cleared Higher Secondary Certificate (HSC) (12th) within the State and also possesses domicile.

5. Since an apprehension had been raised in respect of 15% institutional quota, appropriate amendments were carried out in Rules 5 and 8 of the 2016 Rules whereby it was made clear that for the institutional quota, seats of 15% students would be considered eligible on all India basis including Non-resident Indians (NRI) and Overseas Citizens of India (OCI) without the requirement of clearing 10th or 12th standards from institutions within the State of Maharashtra and/or without the requirement of domicile.

6. Rule 5 of the 2016 Rules was further amended on April 20, 2019 to give relief to students seeking admission, who cleared their 10th standard examination in the year 2017 or prior thereto from the outside State of Maharashtra.

7. Presently, as the eligibility criteria stands, a student seeking admission is required to satisfy the following criteria:

(a) Must clear 10th and 12th standards from an institution situate within the State of Maharashtra;

(b) Must be a domicile of the State of Maharashtra; and

(c) If a student clears 10th standard in the year 2017 or prior thereto from an institution outside the State of Maharashtra, he would still be considered eligible provided he has passed the Higher Secondary Certificate examination from an institution within the State of Maharashtra and also possesses the domicile certificate.

Proceedings before this Bench, and the Writ Petitions:

8. Initially, on October 1, 2020, this Bench was seized of three writ petitions, viz.-

(i) Writ Petition (St.) No.93476 of 2020
(Nibir Jyoti Das Vs. State of Maharashtra and Others)

ii. Writ Petition (St.) No.93473 of 2020
(Ms. Satyanidhi D. Dalal Vs. State of Maharashtra and Others)

iii Writ Petition (St.) No.92812 of 2020
(Vedantaa Institute of Academic Excellence Pvt. Ltd. And Another Vs. State of Maharashtra and Others.)

9. Considering the interim decision of a coordinate bench of this Court dated September 19, 2016 in a batch of writ petitions [being Writ Petition Nos.10158, 10160, 10506 and 10507 of 2016]

with Writ Petition No.10158 **(Mahatma Gandhi Vidyamandir Vs. State of Maharashtra & Ors.)** as the lead matter as well as the final decision of another coordinate bench of this Court dated July 26, 2018 in a batch of writ petitions with Writ Petition No.2393 of 2017 **(Yellamali Venkatapriyanka Vs. State of Maharashtra and Others)** being the lead matter, interim relief was declined by order dated October 28, 2020 in respect of those writ petitions referred to in the preceding paragraph. Subsequently, having been informed of the batch of writ petitions considered by the coordinate bench of this Court on September 19, 2016 to be ready for final hearing, this Bench directed listing of all such writ petitions on November 25, 2020. On and from November 25, 2020, the writ petitions were heard intermittently and hearing was finally concluded on January 18, 2021. All such writ petitions are proposed to be disposed of by this common judgment and order.

10. The writ petitioners Nibir Jyoti Das (hereafter “Nibir Jyoti”, for short) and Ms. Satyanidhi D. Dalal (hereafter “Ms. Dalal”, for short) have voiced similar grievances but in differing factual background.

11. Nibir Jyoti, hailing from the State of Assam, is desirous of pursuing MBBS course by taking admission in a private medical college in the State of Maharashtra. All the colleges imparting education in the field of Health Sciences informed Nibir Jyoti, upon inquiries made by him, that since he is not domiciled in the State of Maharashtra, he cannot seek admission either under 85% quota or under 15% quota in view of Rule 5 read with Rule 8 of the 2016 Rules.

12. Ms. Dalal has been issued a domicile certificate by the State of Maharashtra. She completed her initial schooling and secondary education from institutions in the State of Madhya Pradesh. She cleared her 11th and 12th standards from an institution in the State of Maharashtra. However, in view of the stipulation that she was required to clear 10th standard examination from an institution in the State of Maharashtra, she has not satisfied the eligibility criteria for admission in the MBBS Course.

13. The main prayers in the writ petitions of Nibir Jyoti and Ms. Dalal are identical and hence, are reproduced below:

"(a) call for the relevant records and proceedings from the office of Respondent authorities and after going into the

legality of the same, quash and set aside Rule 5 of the Rules framed under Maharashtra Unaided Private Professional Educational Institutions (Regulation of Admissions and Fees) Act, 2015 to the extent it reserves the 85% quota for local students being violative of Article 19(1)(g) and also violative of Article 14 of the Constitution of India and therefore, the same Rule is required to be read down to mean that outside State students are eligible and entitled to claim MBBS seats under 85% quota in private unaided medical colleges.

(b) Direct the Respondent State of Maharashtra to allow the Petitioner to fill up online application for admission to MBBS course in private unaided medical college situated in State of Maharashtra under 85% quota.

(c) Direct the Respondent State to forthwith make changes on its web portal and/or computerized system so that student irrespective of his/her domicile can claim MBBS seat in private medical colleges situated in State of Maharashtra under % 15% Institutional quota as envisaged under Rule 8 of Rule at Exhibit "F" of the Writ Petition.

(d) Hold and declare that it is unconstitutional, illegal to reserve cent percent seats in favour of local students.

(e) Hold and declare that by introducing concept of domicile, even for admission to private unaided medical colleges Respondent State has violated fundamental rights of the Petitioner guaranteed under Article 19(1)(g) of the Constitution of India."

14. Vedantaa Institute of Academic Excellence Pvt. Ltd. (hereafter "the Company", for short) is the first petitioner in the third writ petition being Writ Petition (St.) No.92812 of 2020. It has set up the second petitioner, Vedantaa Institute of Medical Sciences (hereafter "the medical college", for short), based on due

permission granted by the Union of India on the recommendations of the MCI. By an order dated May 31, 2017, the medical college was granted permission to admit 150 students per year to the undergraduate MBBS course. Such medical college received an affiliation from the Maharashtra University of Health Sciences (hereafter "the said University", for short) on July 24, 2017. The Company and the medical college have no grievance in respect of 15% All India quota of seats. They are, however, aggrieved by Rule 5 read with Rule 8 of the 2016 Rules insofar as the same make it mandatory to admit students who have cleared 10th and 12th standards from institutions situate in the State of Maharashtra with requirement of domicile, and completely prohibit outsiders from seeking admission, even though the outsiders could be more meritorious than the local students in view of their performance in the NEET. The crux of the matter is that the Company and the medical college seek admissions based on the rule of merit irrespective of domicile and they claim it to be their Fundamental Right under Article 19(1)(g) of the Constitution to seek such admissions to be legitimized upon Rules 5 and 8 being declared *ultra vires*. The writ petition was affirmed on September 9, 2020 when COVID-19 was at its

peak in the country and at a time when the NEET, 2020 had not been conducted and obviously, the centralized admission process had not commenced. The writ petition contained the following prayers:-

"(a) call for the relevant records and proceedings from the office of Respondent authorities and after going into legality of the same, direct the State of Maharashtra to forthwith allow outside Maharashtra students to apply and claim MBBS seats in Petitioner college.

(b) Allow the Petitioner college to receive applications from the students who are not domicile of State of Maharashtra for claiming MBBS seats under !5% institutional quota.

(c) direct the State of Maharashtra to forthwith make changes on its web portal and/or in computerized system so that student irrespective of his domicile can claim MBBS seat in Petitioner College under 15% Institutional quota.

(d) hold and declare that it is unconstitutional to reserve cent percent seats in favour of local students.

(e) hold and declare that by introducing the concept of domicile, Respondent State and other Authorities have violated fundamental rights of Petitioner College guaranteed under Article 19(1)(g) of the Constitution of India, the impugned Rules is therefore, required to be read down to mean and include, all the students irrespective of their domicile or passing of 10th or 12th standard examination from outside State of Maharashtra, are eligible to apply for claiming MBBS seat available in private medical colleges in Maharashtra.

(f) direct the Respondent State to allow outside State students to claim MBBS seats in Petitioner College under 85% quota and they be considered eligible for admission to MBBS course in Petitioner College."

15. Pursuant to a prayer for amendment having been allowed, *inter alia*, the following prayer was added:

"(f-1) Quash and set aside Rule Nos.5 and 8 of the Rules at Ex-B to the Petition to the extent it makes outside state students ineligible for admission to health science courses being violative of Petitioner's fundamental right guaranteed under Article 19(1)(g) of the Constitution of India."

16. In the other batch of writ petitions presented in the year 2016, the challenge is not substantially different. Rule 5 of the 2016 Rules, as initially made effective from August 18, 2016 and thereafter amended, to the extent the same restricts admission to almost 85% of the seats in private unaided and medical/dental colleges to students who are domiciled in the State of Maharashtra and who have passed the Secondary School Certificate and Higher Secondary Certificate examinations from institutions situate within the State of Maharashtra, has been subjected to challenge.

17. Since Mr. V.M. Thorat, learned advocate appeared for all the petitioners, we proceeded to hear him in support of the prayers made in the writ petitions. We have also heard Mr. A.A. Kumbhakoni, learned Advocate General for the State of Maharashtra in opposition. The parties were also granted liberty to file their respective written notes of arguments.

Submissions on behalf of the petitioners:

18. Having regard to the decision of the Supreme Court reported in (2018) 17 SCC 524 (**Rajdeep Ghosh Vs. State of Assam & Others**), which was placed before us by Mr.Kumbhakoni in the course of argument, Mr. Thorat, in our view, rightly did not endeavour much to argue for relief in favour of Nibir Jyoti and Ms. Dalal. The arguments advanced by him were mainly directed to secure relief for the Company and the medical college in Writ Petition (St.) No.92812 of 2020 and the Association of Management of Unaided Private Medical and Dental Colleges, being the writ petitioner in Writ Petition (St.) No.10507 of 2016.

19. The main ground on which Rule 5 read with Rule 8 of the 2016 Rules is assailed is that the same violates the Fundamental Right guaranteed to the petitioners under Article 19(1)(g) of the Constitution of India.

20. Mr.Thorat initiated the debate by contending that insofar as admission to medical colleges is concerned, the basic rule that ought to be implemented by every State is that admissions should be based on merit, and only merit. It was contended that if the requirement of domicile is insisted upon in the matter of

admission to medical courses, it is merit that is compromised. The object of the State to provide appropriate and necessary medical and healthcare facilities should not be confined to narrow considerations of giving eminence to domicile.

21. According to Mr. Thorat, even prior to the decisions of the Supreme Court reported in (2002) 8 SCC 481 **(T.M.A. Pai Foundation Vs. State of Karnataka & Others)**, (2003) 6 SCC 697 **(Islamic Academy Vs. State of Karnataka & Others)** and (2005) 6 SCC 537 **(P.A. Inamdar Vs. State of Maharashtra & Others)**, the principle that those who incur expenditure for running the medical colleges will have control over the colleges and can make the rules was introduced in the decisions reported in AIR 1955 SC 334 **(D.P. Joshi Vs. State of Maharashtra)**, AIR 1968 SC 1012 **(Minor P. Rajendran Vs. State of Madras)** and (1969) 2 SCC 228 **(Kumari Chitra Ghosh Vs. Union of India)**.

22. Reference was made to the decision of the Supreme Court reported in (1986) 3 SCC 727 **[Dr.Dinesh Kumar and Others (II) Vs. Motilal Nehru Medical College]** wherein the Court observed that the scheme introduced in the case reported in (1984) 3 SCC 654 **(Dr.Pradeep Jain Vs. Union of India & Others)** cannot be

extended to private colleges because they are neither instrumentality of the Government nor have they decided to opt for the said scheme.

23. It was next argued that private medical colleges which run without receiving a single penny from the State should not be made to suffer the rigours of State control. Requiring private medical colleges to adhere to domicile is *per se* bad in law.

24. Mr. Thorat then referred to the decisions in **T.M.A. Pai Foundation** (supra) and **Islamic Academy** (supra) for the proposition that the policy of the Government in regard to seat-sharing cannot be introduced and/or forced on private unaided professional minority and non-minority colleges and also that the imposition of restrictions or introduction of regulations so as to impair the rights of the citizens under Articles 19(1)(g) and 30 of the Constitution of India would amount to unreasonable restrictions, thereby impinging on their Fundamental Rights.

25. Much reliance was placed by Mr.Thorat on the decision in **P.A. Inamdar** (supra) and in particular to paragraphs 124 and 125, reading as follows:

> "124. So far as appropriation of quota by the State and

enforcement of its reservation policy is concerned, we do not see much of a difference between non-minority and minority unaided educational institutions. We find great force in the submission made on behalf of the petitioners that the States have no power to insist on seat-sharing in unaided private professional educational institutions by fixing a quota of seats between the management and the State. The State cannot insist on private educational institutions which receive no aid from the State to implement the State's policy on reservation for granting admission on lesser percentage of marks i.e. on any criterion except merit.

125. As per our understanding, neither in the judgment of *Pai Foundation* nor in the Constitution Bench decision in *Kerala Education Bill* which was approved by *Pai Foundation* is there anything which would allow the State to regulate or control admissions in the unaided professional educational institutions so as to compel them to give up a share of the available seats to the candidates chosen by the State, as if it was filling the seats available to be filled up at its discretion in such private institutions. This would amount to nationalization of seats which has been specifically disapproved in *Pai Foundation*. Such imposition of quota of State seats or enforcing reservation policy of the State on available seats in unaided professional institutions are acts constituting serious encroachment on the right and autonomy of private professional educational institutions. Such appropriation of seats can also not be held to be a regulatory measure in the interest of the minority within the meaning of Article 30 (1) or a reasonable restriction within the meaning of Article 19(6) of the Constitution. Merely because the resources of the State in providing professional education are limited, private educational institutions, which intend to provide better professional education, cannot be forced by the State to make admissions available on the basis of reservation policy to less meritorious candidates. Unaided institutions, as they are not deriving any aid from State funds, can have their own admissions if fair, transparent, non-exploitative and based on merit."

26. Mr.Thorat then referred to the decision reported in (2016) 7 SCC 353 **(Modern Dental College and Research Centre Vs.**

State of Madhya Pradesh) and contended that the Court, while dealing with a legislation enacted by the State of Madhya Pradesh, having regard to larger public interest and welfare of the students' community held that the findings in **T.M.A. Pai Foundation** (supra) and **P.A. Inamdar** (supra) permit the State to regulate admission by providing centralized and single-window procedure, and that holding of a common entrance test for determination of merit for admission to private unaided professional educational institutions by the State as well as any agency which enjoys utmost credibility and expertise in the matter, thereby ensuring transparency, is permissible.

27. Having regard to the aforesaid decisions of the Supreme Court, Mr. Thorat contended that the law, by now, is well settled that the Fundamental Rights to establish a college can be regulated by the State but such regulations shall be limited to (i) introducing norms for maintaining educational standards in professional institutions, whether run by a minority or non-minority; (ii) such regulations could introduce qualification for teachers and curriculum and syllabi for the courses, etc. and (iii) to hold common entrance test for ensuring merit-based selection followed by centralized process of admission.

28. Mr. Thorat conceded that he had argued the batch of writ petitions with **Yellamali Venkatapriyanka** (supra) being the lead matter and that the coordinate bench of this Court by its decision dated July 26, 2018 had declined interference and dismissed all the writ petitions. He, however, pointed out that the challenge in all such writ petitions was not grounded on Article 19(1)(g) but was rooted in Article 14 of the Constitution, which is not exactly the point that he had argued before us. It was thus submitted that the decision of the coordinate bench in **Yellamalli Venkatapriyanka** (supra) would have no application in the present case.

29. Mr.Thorat concluded his argument by submitting that since the Government policy on seat-sharing intrudes upon the freedom of private unaided colleges protected under Article 19(1)(g) and is not saved by Article 19(6), such policy is unconstitutional and ought to be declared as such and consequently struck down.

Submissions on behalf of the respondents:

30. Appearing on behalf of the State and resisting the relief claimed in the writ petitions, Mr. Kumbhakoni contended that the subordinate legislation under challenge is neither manifestly

arbitrary nor does it offend any parent law having binding effect and hence, there is no merit in the challenge.

31. Referring to paragraph 65 of the decision in **Modern Dental College and Research Centre** (supra), Mr.Kumbhakoni contended that law is well-settled that the reasonableness of a restriction must be determined in an objective manner and from the standpoint of the interests of the general public and not from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations. Therefore, the private interests of the Company and the medical college have to yield to larger public interest, which is the soul of Article 19(6).

32. According to Mr. Kumbhakoni, challenge to the Constitutional validity of the 2016 Rules was laid in a batch of writ petitions before this Court. A coordinate bench of this Court by its judgment and order dated July 26, 2018 in **Yellamalli Venkatapriyanka** (supra) upheld the validity of the 2016 Rules. A special leave petition that was carried in the Supreme Court was dismissed in view of the decision in **Rajdeep Ghosh** (supra). The issue raised by the petitioners not being *res integra* any longer, it was submitted that the challenge ought to be nipped in the bud.

33. Reference was next made by Mr. Kumbhakoni to the decision of the Supreme Court of recent origin reported in (2020) 8 SCC 705 **(Christian Medical College Vellore Association Vs. Union of India and Others)**. Relying on paragraphs 8, 19, 32, 34, 38, 59 and 62 of the said decision, it was brought to our notice that Transferred Case (C) No. 25 of 2019 was considered along with various other transferred cases, writ petitions and a civil appeal. Such transferred case (No. 25 of 2019) was registered, upon Transfer Petition (Civil) No. 284 of 2017 (P.A. Inamdar Vs. State of Maharashtra and others) being allowed by the Supreme Court by an order dated November 22, 2018. The Court by such order directed transfer of Writ Petition No.1243 of 2016 (P.A. Inamdar Vs. State of Maharashtra and others) pending before this Court to be heard along with Transferred Case (C) No. 98 of 2012 and other connected matters. Placing Transfer Petition (Civil) No. 284 of 2017 before us, it was shown that in Writ Petition No.1243 of 2016, what the petitioner questioned was the vires of the 2015 Act including Sections 2(m), 5, 6(2) and 9(i) & (iii) insofar as the same were made applicable to unaided private minority professional educational institutions, and prayed that the same be declared *ultra vires*, illegal, void *ab initio* and violative

of Fundamental Right under Article 30(1) read with Article 15(5) of the Constitution. For the detailed reasons assigned by the Court, it was held that there was no violation of the rights of the unaided/aided minority to administer institutions under Articles 19(1)(g) and 30 read with Articles 25, 26 and 29(1) of the Constitution of India and that none of the legislations could be said to be *ultra vires.* Accordingly, all transferred cases, writ petitions and the civil appeal stood disposed of without any interference.

34. It has been the endeavour of Mr.Kumbhakoni to impress upon us that with the pronouncement of the decision in **Christian Medical College Vellore Association** (supra), where rights sought to be enforced by minority educational institutions under Article 30 read with Articles 25, 26 and 29(1) of the Constitution were repelled together with rights claimed under Article 19(1)(g) thereof, it is too late in the day for Mr.Thorat to contend that notwithstanding the weight of all these authorities, any issue remains undecided which this Bench ought to examine.

35. As has been noticed above, a coordinate bench of this Court by its order dated September 19, 2016 declined interim relief

while hearing the batch of writ petitions filed in the year 2016. Taking us through the entirety of the said decision, Mr. Kumbhakoni submitted that although the same is an interim order but viewed in the light of the detailed reasons assigned by the coordinate bench, not much is left for pronouncement by this Bench on the issue that has been raised by Mr. Thorat and based on the reasons so assigned, this Bench ought to follow the same and proceed to dismiss the writ petitions.

36. Inviting our attention to the Division Bench decision of the Madhya Pradesh High Court reported in 2017(1) M.P.L.J. 472 **(Rudrika Pushpraj Bhatele Vs. State of Madhya Pradesh and Others)**, Mr. Kumbhakoni submitted that there the Court was considering a reverse challenge. The relevant regulations applicable in the State of Madhya Pradesh dispensed with the requirement of domicile/permanent resident criterion in respect of general category candidates in private medical and dental colleges, thereby throwing open general category seats in MBBS and BDS courses in private medical and dental colleges situate within Madhya Pradesh to students who are not local residents of such State. The Bench declared Regulation 6 of the relevant regulations to be *ultra vires* and unconstitutional and directed the

respondents to apply the requirement of domicile/permanent resident to all students seeking admissions under the general category seats in MBBS and BDS courses in private medical colleges without making any distinction or discrimination. Referring to paragraphs 72 and 74, it was contended that the Division Bench followed the Supreme Court decisions wherein basis of domicile/permanent resident was upheld and found to be in consonance with provisions in Articles 14 and 15 of the Constitution of India.

37. Further, Mr.Kumbhakoni submitted that the attempt of Mr. Thorat to re-argue the entire matter by raising a challenge to the 2016 Rules on a new ground of violation of Article 19(1)(g) of the Constitution of India is not permissible in view of the decision of the Supreme Court reported in (1977) 4 SCC 415 **(Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji & others)**.

38. Finally, it was submitted that even otherwise, the writ petitions thoroughly lack merit in view of the decisions rendered by the Supreme Court from time to time and therefore, all the writ petitions ought to be dismissed.

Rejoinder

39. According to Mr.Thorat, it has not been contended by Mr.Kumbhakoni that imposing State policy or seat-sharing formula has been permitted by the Supreme Court in the cases referred to by him. On the contrary, having regard to the clear position of law emanating from the decisions in **T.M.A. Pai Foundation** (supra), **Islamic Academy** (supra) and **P.A. Inamdar** (supra) where imposition of State policy on private unaided medical colleges and/or seat-sharing formula in such colleges has been disapproved, the impugned rules ought to be held to impose unreasonable restrictions on the Fundamental Right protected under Article 19(1)(g) of the Constitution and, therefore, is *ultra vires*.

Decision

40. Having considered the pleadings, the rival contentions advanced at the Bar and the authorities cited, we now proceed to examine the worth of the challenge laid by Mr.Thorat on behalf of the petitioners.

41. Certain facts and circumstances are not in dispute. Consequent to the decision of the Supreme Court reported in

(2016) 4 SCC 342 **(Medical Council of India Vs. Christian Medical College, Vellore)**, admissions to MBBS courses in colleges all over the country have to be effected on the rule of merit, as determined in the NEET. Any minority educational institution or private unaided educational institution imparting medical education through the MBBS course conducted by it is not entitled in law to claim that admissions in such colleges ought to be left to be devised by the management thereof, based on Fundamental Rights guaranteed under Articles 30 and 19(1)(g), respectively. Here, the writ petitions are not at the instance of any minority educational institution and, therefore, this Bench is concerned only with claims advanced by private unaided educational institutions. Once it is conceded by the private unaided educational institutions that they have no say in respect of admissions based on the rule of merit determined in the NEET, the main questions that would arise are whether such institutions can question the requirement of domicile imposed by the 2016 Rules and also as to whether in furtherance of their claim to enforce their Fundamental Right guaranteed by Article 19(1)(g), can they seek a declaration from this Court that the 85% State quota seats should be left open for being filled up on the

basis of NEET results but without being obliged to admit students having domicile in Maharashtra.

42. For the reasons to follow, this Bench is quite in agreement with Mr.Kumbhakoni that the issue raised by Mr.Thorat of infringement of the right guaranteed to the private unaided educational institutions under Article 19(1)(g) is no longer *res integra* and that it is not open to them to seek any declaration that they are not obliged to admit students having domicile in Maharashtra.

43. Reservation on the basis of domicile is a permissible course of action, is settled law. If any authority is required, one may refer to the Constitution Bench decision of the Supreme Court reported in (2003) 11 SCC 146 **(Saurabh Chaudri Vs. Union of India)**. There, the Court was considering a writ petition at the instance of candidates who intended to take admission in Post-Graduate medical courses conducted by the Delhi University. They had challenged a notification dated December 31, 2002 as also reservation made by way of institutional preference. Although initially the issue raised was whether reservation made by way of institutional preference is *ultra vires* Articles 14 and 15 of the Constitution of India, but a larger issue, viz. as to whether any

reservation, be it on residence or institutional preference, is constitutionally permissible was raised at the Bar during the hearing. On consideration of the issue as to whether reservation on the basis of domicile is impermissible in terms of clause (1) of Article 15, the Court compared the provisions of Article 15(1) and Article 16(2) and appreciating the distinction that while the words 'place of birth' finds place in the former whereas in the latter, apart from 'place of birth' the words 'domicile' and 'residence' have been used, and feeling itself bound by the decision in AIR 1955 SC 334 **(D.P. Joshi Vs. State of Madhya Bharat)**, the Bench answered the question in the negative.

44. Given this legal position, there could be no qualms raised by the petitioners and rightly so Mr.Thorat did not raise it. His submission, however, has been that such reservation could be imposed on Government and Government aided institutions and should not simultaneously be imposed on the private educational institutions which do not receive any aid from the Government.

45. In **Christian Medical College Vellore Association** (supra), notification issued by the MCI amending Regulation 5 of the Medical Council of India Regulations on Graduate Medical

Education, 1997 (hereafter "the 1997 Regulations", for short), *inter alia*, was under challenge. The amended regulation provided the procedure for selection to MBBS course through NEET. Such provision was under challenge at the instance of the petitioner which claimed rights under Article 30 of the Constitution together with rights under Article 19(1)(g). Such a challenge was spurned. Additionally, this Bench has to remind itself at this stage that an argument that the 2015 Act is violative of Articles 30(1) and 15(5) of the Constitution raised on behalf of minority educational institutions has also been repelled by the Supreme Court in **Christian Medical College Vellore Association** (supra). Rights claimed by minority educational institutions while challenging the 2015 Act not having been granted, it needs an examination in such a situation as to whether a right claimed under Article 19(1)(g) of the Constitution can be successfully enforced, particularly when such a right is not absolute and hedged with conditions imposed by law within the meaning of Article 19(6) thereof.

46. Section 3 of the 2015 Act lays down the provision of eligibility for admissions at any private professional educational institution whereas Section 4 deals with the manner of

admission. Section 5 warns that any admission made in contravention of the provisions of the 2015 Act and/or the rules made thereunder shall be void. Allocation and reservation of seats in an unaided institution, not being a minority educational institution, is the subject dealt with by Section 6. It ordains that allocation shall be in accordance with Maharashtra Act XXX of 2006 and as per the Government policy declared from time to time, including the NRI quota. Section 23 confers power on the State Government to frame rules to carry out the purposes of the 2015 Act, with the rider that rules as framed have to be laid before each House of the State Legislature, as soon as it is made in the manner provided.

47. The 2016 Rules have been framed in exercise of statutory power conferred by Section 23 of the 2015 Act. It has not been shown by Mr.Thorat that the 2016 Rules were not laid before each House of the State Legislature. It has, therefore, to be presumed that the 2016 Rules were so placed and have taken due effect without any modification made by the State Legislature.

48. It is the case of the Company and the medical college that the latter is affiliated to the said University. The said University is

a creature of the Maharashtra University of Health Sciences Act, 1998 (hereafter “the 1998 Act”, for short). Section 63 of the 1998 Act requires the management of an educational institution applying for affiliation from the said University to give an undertaking in respect of the conditions mentioned therein. Section 65 deals with the procedure for affiliation. Such affiliation cannot be effective, unless the institution seeking affiliation agrees to abide by all the conditions imposed by the said University in the letter granting affiliation. On the request of the Bench, Mr.Thorat produced letter dated July 24, 2017 by which the medical college was granted affiliation. One of the conditions of grant of affiliation is that, the rules and regulations made by the Government and the University, as amended from time to time, would be binding on the medical college. Having agreed to comply with such a condition, which would obviously include the stipulations of the 2016 Rules, is it open for the Company and the medical college to resile and challenge Rule 8? The answer to this question is found in paragraph 59 of the decision in **Christian Medical College Vellore Association** (supra). The decision reported in (1974) 1 SCC 717 **(Ahmedabad St. Xavier’s College Society Vs. State of Gujarat)** was considered wherein it

has been held that the institutions are bound by the conditions prescribed for affiliation and recognition. The Company having accepted the aforesaid condition for affiliation of the medical college by the said University, it may not be open after grant of affiliation to challenge the same. However, this Bench does not propose to reject the challenge on this ground only, for, there are other weighty grounds which are discussed hereunder.

49. The constitutional validity of Rules 5 and 8 of the 2016 Rules on the anvil of Article 14 of the Constitution having been upheld by a coordinate bench of this Court in **Mahatma Gandhi Vidyamandir** (supra) and in view of the special leave petition presented against such decision failing before the Supreme Court in the light of the decision in **Rajdeep Ghosh** (supra), the inevitable conclusion is that the impugned statutory provisions do not suffer either from legislative incompetence or arbitrariness qua outsider students. The narrow terrain within which the restriction imposed by the 2016 Rules needs to be examined here is, whether it is unreasonable and, thus, offends Article 19(6).

50. The decision of the Supreme Court reported in (2004) 1 SCC 712 **(Dharam Dutt Vs. Union of India)** is an authority providing

ample guidance on the approach to be followed in testing validity of legislation claimed by a party to offend Article 19. While rendering such decision, the Court considered earlier Constitution Bench decisions reported in AIR 1952 SC 196 **(State of Madras Vs. V.G. Row)**, AIR 1962 SC 171 **(All-India Bank Employees' Association Vs. National Industrial Tribunal)**, and (1978) 1 SCC 248 **(Maneka Gandhi Vs. Union of India)**. Certain relevant passages from such decision are quoted hereinbelow:

> "21. The Constitution Bench in *State of Madras* v. *V.G. Row* laid down twin tests on which the constitutional validity of a legislation under Article 19 is to be tested. The first test is the test of reasonableness which is common to all the clauses under Article 19(1); and the second test is to ask for the answer to the question, whether the restriction sought to be imposed on the fundamental right, falls within clauses (2) to (6) respectively qua sub-clauses (*a*) to (*g*) of Article 19(1). The test of reasonableness, according to the Constitution Bench, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint, and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions, considered them to be reasonable. Under the second test, the Constitution Bench, called upon to deal with the legislation impugned before it by reference to Articles 19(1)(*c*) and 19(4) of the Constitution, held the impugned legislation to be unconstitutional and void because it curtailed the fundamental right to form associations or

unions and fell outside the limits of authorized restrictions under clause (4) of Article 19.

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24. From a reading of the two decisions, namely, *Maneka Gandhi case* (seven-Judge Bench) and *All India Bank Employees Assn. case* (five-Judge Bench), the following principles emerge: (*i*) a right to form associations or unions does not include within its ken as a fundamental right a right to form associations or unions *for achieving a particular object or running a particular institution*, the same being a concomitant or concomitant to a concomitant of a fundamental right, but not the fundamental right itself. The associations or unions of citizens cannot further claim as a fundamental right that they must also be able to achieve the purpose for which they have come into existence so that any interference with such achievement by law shall be unconstitutional, unless the same could be justified under Article 19(4) as being a restriction imposed in the interest of public order or morality; (*ii*) a right to form associations guaranteed under Article 19(1)(*c*) does not imply the fulfilment of every object of an association as it would be contradictory to the scheme underlying the text and the frame of the several fundamental rights guaranteed by Part III and particularly by the scheme of the guarantees conferred by sub-clauses (*a*) to (*g*) of clause (1) of Article 19; (*iii*) while right to form an association is to be tested by reference to Article 19(1)(*c*) and the validity of restriction thereon by reference to Article 19(4), once the individual citizens have formed an association and carry on some activity, the validity of legislation restricting the activities of the association shall have to be judged by reference to Article 19(1)(*g*) read with Article 19(6). A restriction on the activities of the association is not a restriction on the activities of the individual citizens forming membership of the association; and (*iv*) a perusal of Article 19 with certain other Articles like 26, 29 and 30 shows that while Article 19 grants rights to the citizens as such, the associations can lay claim to the fundamental rights guaranteed by Article 19 solely on the basis of their being an aggregation of citizens i.e. the rights of the citizens composing the body. As the stream can rise no higher than the source, associations of citizens cannot lay claim to rights not open to citizens or claim freedom from restrictions to which the citizens composing it are subject.

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28. A right to form unions guaranteed by Article 19(1)(*c*) does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within clause (4) of Article 19 which might in any way hamper the fulfilment of those objects, should be declared unconstitutional and void. Even a very liberal interpretation cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective

bargaining or otherwise. The right to strike or the right to declare a lockout may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 but by totally different considerations. A right guaranteed by Article 19(1)(*c*) on a literal reading thereof can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. The rights not included in the literal meaning of Article 19(1)(*c*) but which are sought to be included therein as flowing therefrom i.e. every right which is necessary in order that the association brought into existence fulfils every object for which it is formed, the qualifications therefor woulda not merely be those in clause (4) of Article 19 but would be more numerous and very different. Restrictions which bore upon and took into account the several fields in which associations or unions of citizens might legitimately engage themselves, would also become relevant.

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37. The Court, confronted with a challenge to the constitutional validity of any legislative enactment by reference to Article 19 of the Constitution, shall first ask what is the sweep of the fundamental right guaranteed by the relevant sub-clause out of sub-clauses (*a*) to (*g*) of clause (1). If the right canvassed falls within the sweep and expanse of any of the sub-clauses of clause (1), then the next question to be asked would be, whether the impugned law imposes a reasonable restriction falling within the scope of clauses (2) to (6) respectively. However, if the right sought to be canvassed does not fall within the sweep of the fundamental rights but is a mere concomitant or adjunct or expansion or incidence of that right, then the validity thereof is not to be tested by reference to clauses (2) to (6). The test which it would be required to satisfy for its constitutional validity is one of reasonableness, as propounded in the case of *V.G. Row* or if it comes into conflict with any other provision of the Constitution."

(emphasis supplied)

51. The factual scenario emerging from W.P. (Stamp) No. 92812 of 2020 is that certain citizens have formed a company, i.e., the Company, and in its formation, there has been no infraction of the citizens' collective rights under Article 19(1)(c) of the Constitution; the Company, in turn, has set up the medical college, which is an 'occupation' within the meaning of Article

19(1)(g) as interpreted in **T.M.A. Pai Foundation** (supra). The medical college, since the last couple of years, has been functional and imparting medical education. The right to establish and manage an educational institution being a Fundamental Right under Article 19(1)(g) recognized in **T.M.A. Pai Foundation** (supra) has, therefore, been enforced. The medical college in terms of the 1998 Act was bound to obtain affiliation of the said University. If a claim were raised that obtaining compulsory affiliation offends the right guaranteed by Article 19(1)(c), such claim would have collapsed like a pack of cards in view of the decision reported in (1971) 2 SCC 269 **(DAV College Vs. State of Punjab)** where it was held that compulsory affiliation of the educational institution with the university did not in any manner interfere or attempt to interfere with the petitioners' right to form an association under Article 19(1)(c). No question of obtaining affiliation from the said University was ever raised by the Company. There is also no apparent hurdle in the path of the Company and the medical college to carry on its activities. Now, the Company and the medical college claim that restricting entry of outsiders is a violation of their rights under Article 19(1)(g). Viewed in the light of paragraph 37 of the decision

in **Dharam Dutt** (supra), it is to be gathered whether the right claimed falls within the sweep and expanse of sub-clause (g). If yes, then the further question of whether the impugned restriction is saved by clause (6) would arise for decision.

52. Taking a cue from the *ratio decidendi* of **Dharam Dutt** (supra), it can safely be concluded that the Company and the medical college having had full enjoyment of their rights under sub-clauses (c) and (g) of clause (1) of Article 19, they cannot claim as a Fundamental Right that they must be allowed to admit students in the 85% State quota without any restriction being imposed and irrespective of domicile, and thereby achieve whatever object they have in mind in this behalf. Admission of students irrespective of domicile would be an incidence of the right guaranteed under Article 19(1)(g) of the Constitution and the restriction imposed in this regard by Rules 5 and 8 of the 2016 Rules cannot, in view of the dictum in **Dharam Dutt** (supra), be tested by reference to clause (6) of Article 19. The impugned restriction would be required to satisfy constitutional validity applying the test of reasonableness as propounded in **V.G. Row** (supra) and, as noted earlier, the reasonableness of the impugned law, i.e., Rules 5 and 8 of the 2016 on the anvil of

Article 14 has been tested and satisfied when the coordinate bench decided **Yellamalli Venkatapriyanka** (supra). This conclusion would, in effect, foreclose a discussion on the second question.

53. However, assuming *arguendo* that the right claimed by the Company and the medical college falls within the sweep and expanse of sub-clause 19(1)(g), it calls for an exercise to ascertain whether the restriction imposed is reasonable and thus saved by clause (6) of Article 19.

54. Before embarking on such an exercise, it would not be inapt to note a development of immense significance. The sheet-anchor of Mr.Thorat's argument is the law laid down in **P.A. Inamdar** (supra). However, much water has flown under the bridge since **P.A. Inamdar** (supra) was decided. The Constitution (Ninety-third Amendment Act), 2005 inserted clause (5) in Article 15 with effect from January 20, 2006. Such insertion was challenged before the Supreme Court as violative of the basic structure of the Constitution. The Supreme Court in its decision reported in (2014) 8 SCC 1 **(Pramati Educational & Cultural Trust Vs. Union of India)**, upon considering **T.M.A. Pai Foundation**

(supra) and **P.A. Inamdar** (supra), had the occasion to hold as follows:

> "28. *** In our view, all freedoms under which Article 19(1) of the Constitution, including the freedom under Article 19(1)(*g*), have a voluntary element but this voluntariness in all the freedoms in Article 19(1) of the Constitution can be subjected to reasonable restrictions imposed by the State by law under clauses (2) to (6) of Article 19 of the Constitution. Hence, the voluntary nature of the right under Article 19(1)(*g*) of the Constitution can be subjected to reasonable restrictions imposed by the State by law under clause (6) of Article 19 of the Constitution. As this Court has held in *T.M.A. Pai Foundation* and *P.A. Inamdar* the State can under clause (6) of Article 19 make regulatory provisions to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of the management. However, as this Court held in the aforesaid two judgments that nominating students for admissions would be an unacceptable restriction in clause (6) of Article 19 of the Constitution, Parliament has stepped in and in exercise of its amending power under Article 368 of the Constitution inserted clause (5) in Article 15 to enable the State to make a law making special provisions for admission of socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes for their advancement and to a very limited extent affected the voluntary element of this right under Article 19(1)(*g*) of the Constitution. We, therefore, do not find any merit in the submission of the learned counsel for the petitioners that the identity of the right of unaided private educational institutions under Article 19(1)(*g*) of the Constitution has been destroyed by clause (5) of Article 15 of the Constitution."
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> (emphasis supplied)

55. In view of such Constitutional amendment and its validity being upheld, in the respectful opinion of this Bench, the decision in **P.A. Inamdar** (supra) ceases to be the last word on the issue. Nonetheless, this Bench is conscious that Mr.Kumbhakoni has not attempted to sustain Rules 5 and 8 of the 2016 Rules placing reliance on either **Pramati Educational & Cultural Trust** (supra)

or Article 15(5). Reference to such decision has been made by this Bench mainly by way of emphasis to note the developments in the field of law by way of a Constitutional amendment post **P.A. Inamdar** (supra) and is not to be construed as a ground to rule against the Company and the medical college.

56. Authorities need not be cited, for, it is settled law that in adjudging the validity of a restriction, the Courts have necessarily to approach it from the point of view of furthering the social interest which the impugned legislation seeks to promote, and the situation which presented itself to the legislature when the same was enacted. Also, in judging the reasonableness of a law, the Court will necessarily see not only the surrounding circumstances but all contemporaneous legislation passed as part of a single scheme. It is the reasonableness of the restriction and not of the law that has to be found out.

57. While dealing with the writ petition of **Yellamalli Venkatapriyanka** (supra), the coordinate bench noted the stand of the State Government as appearing from an affidavit of Dr. Pravin H. Shingare, Director of Medical Education and Research, Government of Maharashtra, to the effect that Rule 5 of the 1997

Regulations empowered the State Government to frame its own eligibility criteria in respect of 85% State quota. It is in pursuance thereof that Rules 5 and 8 of the 2016 Rules prescribe who would be eligible to be accommodated in the 85% State quota and such prescription has been judicially upheld up to the Supreme Court. Paragraph 38 of the decision traces paragraph 27 of the affidavit where the exact reason advanced by the Government appears for putting in place the stipulations of passing SSC and HSC examinations from institutes situate in Maharashtra coupled with the requirement of possessing a domicile certificate taking into account the interest of the State, and the local and regional requirements to weed out candidates who are not in continuous residence within the State of Maharashtra for 15 years preceding the qualifying examination.

58. What appears to this Bench to clinch the issue in favour of the respondents and against the petitioners are the decisions in **Modern Dental College and Research Centre** (supra), **Rajdeep Ghosh** (supra) and **Christian Medical College Vellore Association** (supra).

59. Based on the decision in **Rajdeep Ghosh** (supra), the Supreme Court upheld the decision of the coordinate Bench of this Court in **Yellamalli Venkatapriyanka** (supra). Such decision puts a quietus to the challenge on the ground of violation of Article 14 of the Constitution.

60. In **Modern Dental College and Research Centre** (supra), the Court observed:

> "64. The exercise which, therefore, is to be taken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and such an exercise involves the weighing up of competitive values, and ultimately an assessment based on proportionality i.e. balancing of different interests.
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> 65. We may unhesitatingly remark that this doctrine of proportionality, explained hereinabove in brief, is enshrined in Article 19 itself when we read clause (1) along with clause (6) thereof. While defining as to what constitutes a reasonable restriction, this Court in a plethora of judgments has held that the expression '*reasonable restriction'* seeks to strike a balance between the freedom guaranteed by any of the sub-clauses of clause (1) of Article 19 and the social control permitted by any of the clauses (2) to (6). It is held that the expression '*reasonable'* connotes that the limitation imposed on a person in the enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of public. Further, in order to be reasonable, the restriction must have a reasonable relation to the object which the legislation seeks to achieve, and must not go in excess of that object….
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> ***
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> 67. Undoubtedly, right to establish and administer educational institutions is treated as a fundamental right as it is termed '*occupation'*, which is one of the freedoms guaranteed under Article 19(1)(*g*). It was so recognised for the first time in *T.M.A. Pai Foundation*. Even while doing so, this right came with certain clutches and shackles. The Court made it clear that it is a noble occupation which would not permit commercialisation or profiteering and, therefore, such educational institutions are to be run on '*no profit no loss basis'*. While explaining the scope of this right, right to admit students and right to fix fee was accepted as facets of this right, the

Court again added caution thereto by mandating that admissions to the educational institutions imparting higher education, and in particular professional education, have to admit the students based on merit. For judging the merit, the Court indicated that there can be a CET. While doing so, it also specifically stated that in case of admission to professional courses such a CET can be conducted by the State. If such a power is exercised by the State assuming the function of CET, this was so recognised in *T.M.A. Pai Foundation* itself, as a measure of '*reasonable restriction on the said right'*. *Islamic Academy of Education* further clarified the contour of such function of the State while interpreting *T.M.A. Pai Foundation* itself wherein it was held that there can be committees constituted to supervise conducting of such CET. This process of interpretative balancing and constitutional balancing was remarkably achieved in *P.A. Inamdar* by not only giving its premature to deholding (*sic* imprimatur to the holding) of CET but it went further to hold that agency conducting the CET must be the one which enjoys the utmost credibility and expertise in the matter to achieve fulfilment of twin objectives of transparency and merit and for that purpose it permitted the State to provide a procedure of holding a CET in the interest of securing fair and merit-based admissions and preventing maladministration.

68. We are of the view that the larger public interest warrants such a measure. Having regard to the malpractices which are noticed in the CET conducted by such private institutions themselves, for which plethora of material is produced, it is, undoubtedly, in the larger interest and welfare of the student community to promote merit, add excellence and curb malpractices. The extent of restriction has to be viewed keeping in view all these factors and, therefore, we feel that the impugned provisions which may amount to '*restrictions'* on the right of the appellants to carry on their '*occupation*', are clearly '*reasonable'* and satisfied the test of proportionality."

(emphasis supplied)

61. The legal position emanating from the aforesaid discussion is that although **T.M.A. Pai Foundation** (supra) held that right to admit students and the right to fix fee were facets of the right to occupation guaranteed under Article 19(1)(g), yet, having regard to mal-practices and unscrupulous activities in the matter of

admissions, the Court cautioned by mandating that admissions of students, in particular, to professional educational institutions have to be based on merit and for judging merit, participation of all intending candidates in a common entrance test to be conducted by the State was held to be a reasonable restriction on the right guaranteed under Article 19(1)(g) and, thus, the unbridled power of the institutions to admit students of their choice as part of Article 19(1)(g) right was left to be regulated by the State by conducting a common entrance test. If admission based on results of a common entrance test like NEET is a reasonable restriction, a *fortiori*, admission of students in the 85% State quota in the manner to be laid down by the State in terms of the 1997 Regulations, without such regulations being subjected to any challenge in any of these writ petitions, would also be a reasonable restriction on the Company's right under Article 19(1)(g). The entire procedure has to be seen as part of a single scheme starting with the 1997 Regulations and culminating in admission of meritorious students as far as possible commensurate with local and regional needs of a particular State.

62. In **Christian Medical College Vellore Association** (supra), the Court after reference to all the decisions on the point including **T.M.A. Pai Foundation** (supra), **Islamic Academy** (supra), **P.A. Inamdar** (supra) and **Modern Dental College and Research Centre** (supra) took note of the prevailing situation of corruption in the field of education and commercialisation of education and came down heavily with the following observations:

> "62. Thus, it is apparent that the provisions in question which have been incorporated in the Act relating to Medical/Dental education, the Government, MCI and DCI cannot be said to be an invasion of the fundamental rights. The intendment is to ensure fairness in the selection, recognition of merit, and the interests of the students. In the national interest, educational institutions are basically for a charitable purpose. By and large, at present education is devoid of its real character of charity, it has become a commodity. To weed out evils from the system, which were eating away fairness in admission process, defeating merit and aspiration of the common incumbent with no means, the State has the right to frame regulatory regime for aided/unaided minority/private institutions as mandated by directives principles, Articles 14 and 21 of the Constitution. The first step has been taken to weed out the evils from the system, and it would not be in the national interest to step back considering the overall scenario. If we revert to the old system, posterity is not going to forgive us. Still, complaints are galore that merit is being ignored by private institutions; there is still a flood of litigation. It seems that unfettered by a large number of regulatory measures, unscrupulous methods and malpractices are yet being adopted. Building the nation is the main aspect of education, which could not be ignored and overlooked. They have to cater to national interest first, then their interest, more so, when such conditions can be prescribed for recognition, particularly in the matter of professional education."

63. Article 19(6) of the Constitution authorizes restriction on the right guaranteed under Article 19(1)(g) to be imposed, *inter alia*, in the interests of the general public. Having regard to the

aforesaid authorities, this Bench is of the considered opinion that the restriction imposed on such a right is in the interest of the general public and in tune with clause (6) of Article 19. The authority competent to impose restriction has done so by a law, enactment whereof was within its competence. Such restriction was imposed keeping in mind local and regional needs. From paragraph 47 of the decision in **Rudrika Pushpraj Bhatele** (supra), it is revealed that Delhi, Gujarat, Karnataka, Kerala, Punjab, Tamil Nadu and West Bengal have reserved 85% seats for being filled up by students having domicile/permanent residence in the respective States. The State of Maharashtra has not adopted a policy which is at variance with the policies of the other States across the country. The petitioners are seeking declaration/directions of the nature which would undo whatever has been settled by the Supreme Court in the various decisions referred to above and adopted by the State in furtherance thereof.

64. This Bench shares the view expressed in the decision in **Rudrika Pushpraj Bhatele** (supra) where **Dr. Dinesh Kumar** (supra) and **Dr. Jagdish Saran** (supra) cases were considered. In view thereof, individual consideration of the ratio of such decisions is not felt necessary.

65. For all the reasons aforesaid, this Bench finds no reason to interfere with the impugned legislation. The writ petitions stand dismissed. However, the parties shall bear their own costs.

66. In view of the dismissal of the writ petitions, the pending applications do not survive and stand dismissed accordingly.

(G.S. Kulkarni, J.) **(Chief Justice)**